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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 ESTATE OF CARL R. INGRAM,
8 through its personal representatives,
9 AMITY LARSEN and DANIELLE
10 WOLD,

11 Plaintiffs,

12 v.
13 AMERICAN STATES INSURANCE
14 COMPANY; and SAFECO
15 INSURANCE COMPANY OF
16 ILLINOIS,

17 Defendants.

18 NO: 2:14-CV-58-RMP

19 ORDER GRANTING DEFENDANT
20 AMERICAN STATES INSURANCE
21 COMPANY'S MOTION FOR
22 PARTIAL SUMMARY JUDGMENT

23 BEFORE THE COURT is a Motion for Partial Summary Judgment filed by
24 Defendant American States Insurance Company (“American States”), ECF No. 11.
25 The motion was heard without oral argument. John M. Silk appeared on behalf of
26 Defendant American States. Robert W. Rembert appeared on behalf of the
27 Plaintiff, the Estate of Carl R. Ingram. The Court has considered the briefing and
28 the file and is fully informed.

1 BACKGROUND

2 Plaintiff, the Estate of Carl R. Ingram, filed a Complaint for Underinsured
3 Motorist Coverage in Asotin County. ECF No. 1-1 at 3-13. Defendants
4 subsequently filed for removal of the case to federal court on the basis of diversity
5 jurisdiction. ECF No. 1.

6 According to the allegations of the Complaint, Carl R. Ingram was struck
7 and killed by a motorist, Kenneth A. Smith, on the evening of December 14, 2012,
8 after Mr. Ingram had stopped to provide assistance to a couple who were
9 attempting to remove loose dogs from the roadway and vicinity. ECF No. 1-1 at 3-
10 13. Plaintiff alleges that Mr. Smith admitted at the scene that he did not even see
11 Mr. Ingram prior to striking him. *Id.*

12 Plaintiff alleges that Mr. Smith was an underinsured motorist at the time of
13 the incident and that Mr. Smith's insurer promptly tendered its applicable liability
14 limit. Plaintiff also alleges that Defendants American States and Safeco Insurance
15 Company of Illinois each insured Mr. Ingram for underinsured motorist coverage
16 at the time of the incident. *Id.*

17 Pertinent to the instant motion, Plaintiff further alleges that Defendant
18 American States' insurance policy contained an invalid provision requiring the
19 insured to bring suit within one year after the date on which the cause of actions
20 accrues to receive UIM benefits. *Id.* American States' policy included

1 underinsured motorist coverage via the Washington Underinsured Motorist

2 Coverage endorsement. The relevant part of the policy states:

3 **3. Legal Action Against Us** is replaced by the following:

4 a. No one may bring a legal action against us under this Coverage
5 Form until there has been full compliance with all the terms of this
Coverage Form.

6 b. Any legal action against us under this Coverage Form must be
7 brought within one year after the date on which the cause of action
accrues.

8 ECF No. 12-1 at 7.

9 Defendant American States now files for partial summary judgment seeking
10 a declaration that the policy provision quoted above is valid and enforceable under
11 Washington law. ECF No. 11.

12 DISCUSSION

13 Summary judgment is appropriate where the movant has shown that there
14 are no genuine issues of material fact and that he is entitled to judgment as a matter
15 of law. Fed. R. Civ. P. 56(a). “The interpretation of an insurance contract is a
16 question of law, properly decided on summary judgment unless ‘contract terms are
17 ambiguous and contradictory evidence is introduced to clarify the ambiguity.’”

18 *Newmont USA Ltd. v. Am. Home Assurance Co.*, 795 F. Supp. 2d 1150, 1166 (E.D.
19 Wash. 2011) (quoting *Estate of Sturgill v. United Servs. Auto. Ass’n*, 84 Wn. App.
20 877, 880 (1997)). The “meaning and validity” of an insurance policy “is resolved

1 as a matter of law.” *Id.* (quoting *Safeco Ins. Co. of Illinois v. Auto. Club Ins. Co.*,
2 108 Wn. App. 468, 472 (2001)).

3 The policy provision at issue provides that an insured must bring any legal
4 action against American States regarding coverage “within one year after the date
5 on which the cause of action accrues.” ECF No. 12-1 at 7. American States
6 contends that this provision is expressly allowed by RCW 48.18.200, which states:

7 (1) No insurance contract delivered or issued for delivery in this state
8 and covering subjects located, resident, or to be performed in this
state, shall contain any condition, stipulation, or agreement

9 ...

10 (c) limiting right of action against the insurer to a period of less than
11 one year from the time when the cause of action accrues in connection
with all insurances other than property and marine and transportation
insurances. In contracts of property insurance, or of marine and
12 transportation insurance, such limitation shall not be to a period of
less than one year from the date of the loss.

13 Underinsured motorist coverage is not “property” or “marine transportation”
14 insurance. “Property insurance” is defined by statute as “insurance against loss of
15 or damage to real or personal property.” RCW 48.11.040. “Marine and
16 transportation insurance” is defined as “insurance against loss of or damage to . . .
17 vessels, craft, aircraft, vehicles . . . and all other kinds of property and interests
18 therein, in respect to, appertaining to or in connection with any and all risks or
19 perils of navigation, transit or transportation,” including loss or damage to
20 “person[s] or property in connection with or appertaining to a marine, transit or

1 transportation insurance.” RCW 48.11.050. “Vehicle insurance,” on the other
2 hand, is defined as follows:

(1) "Vehicle insurance is insurance against loss or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, and against any loss or liability resulting from or incident to ownership, maintenance, or use of any such vehicle or aircraft or animal.

(2) Insurance against accidental death or accidental injury to individuals while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance.

RCW 48.11.060.

Despite the plain language of RCW 48.18.200, Plaintiff contends that the one-year limitation for bringing suit against American States from “the date on which the cause of action accrues” is in violation of Washington’s underinsured motorist statute, RCW 48.22.030. The underinsured motorist statute is intended to allow “an injured party to recover those damages which the injured party would have received had the responsible party been insured with liability limits as broad as the injured party’s statutorily mandated underinsured motorist coverage limits.”

Britton v. Safeco Ins. Co. of Am., 104 Wn. 2d 518, 531 (1985). Where an underinsured motorist endorsement does not provide protection commensurate to the underinsured motorist statute, “the offending portion of the policy is void and

1 unenforceable." *Id.* "In other words, the Legislature has mandated a certain
2 amount and kind of coverage; the insurer cannot avoid that obligation by a policy
3 clause which has not been authorized by the Legislature." *Id.*

4 The Washington Supreme Court has recognized that "the Legislature
5 intended broad UIM coverage when it enacted our UIM statute." *Greengo v.*
6 *Public Employees Mut. Ins. Co.*, 135 Wn. 2d 799, 805-06 (1998) (citing *Mid-*
7 *Century Ins. Co. v. Henault*, 128 Wn. 2d 207, 212 (1995)). To that end, the
8 Washington underinsured motorist statute must be liberally construed. *See id.* at
9 806. Washington courts will void exclusionary or limiting clauses where they
10 conflict with the express language of the statute or where they are contrary to the
11 statute's declared public policy. *See id.* (citing *Bohme v. PEMCO Mut. Ins. Co.*,
12 127 Wn. 409, 412 (1995)).

13 The crux of Plaintiff's argument is that that the one-year suit limitation
14 provision violates public policy because it "impose[s] time limits for an insured to
15 file suit for benefits which are shorter than the period an insured would have to file
16 suit against a fully insured tortfeasor." ECF No. at 13 at 11. In support of this
17 argument, Plaintiff cites to *Signal Insurance Co. v. Walden*, where the Washington
18 Court of Appeals held void an insurance contract provision limiting the period of
19 time to bring suit against the underinsured motorist to one year from the date of the
20 accident. 10 Wn. App. 350 (1974). The court noted that "any limiting language in

1 an insurance contract which has the effect of providing less protection than that
2 made obligatory by the [Washington underinsured motorist] statute would be
3 contrary to the public policy . . . and of no force and effect.” *Id.* at 353. In holding
4 that the provision at issue in *Signal* was void, the court stated that “[t]he one year
5 limitation in the uninsured motorist section of the policy inhibits the fulfilment of
6 the public policy that a claimant shall have the same rights in an uninsured
7 motorist situation as he would have against a responsible third party.” *Id.* at 353-
8 54.

9 The Washington Supreme Court previously determined when a cause of
10 action “accrues” pursuant to breach of an insurance contract. In *Safeco Insurance*
11 *Co. v. Barcom*, the court rejected an argument that the statute of limitations for
12 breaching an insurance contract should begin to run “on the date of the accident.”
13 112 Wn. 2d 575, 583 (1989). The court explained that “no justiciable controversy
14 exists under a contract until a breach actually occurs” and held that “the contract
15 statute of limitations begins to run against an insured on the date of the breach of
16 the contract of insurance by the insurer.” *Id.* Therefore, as American States
17 argues, the one year limitation period begins to run against the insurer when the
18 insurer providing underinsured motorist benefits refuses to pay a claim or pays less
19 than the insured believes they are entitled to, and not from the time that the
20 underinsured motorist damaged the insured.

The Court agrees with American States' interpretation, which makes the policy provision at issue permissible under RCW 48.18.200 and does not violate the underinsured motorist statute. Plaintiff was not limited in the usual amount of time that he would have to pursue action against the underinsured motorist, which is three years under RCW 4.16.080(2). Rather, under Plaintiff's policy with American States, once American States' obligation to pay benefits pursuant to the underinsured motorist policy arose, and American States allegedly breached the contract policy by failing to honor that obligation, Plaintiff then had one year to pursue legal action against American States.

Accordingly, **IT IS HEREBY ORDERED** that Defendant American States' Motion for Partial Summary Judgment, **ECF No. 11**, is **GRANTED**.

The District Court Clerk is directed to enter this Order and to provide copies to counsel.

DATED this 25th day of August 2014.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Chief United States District Court Judge